

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

NEW PRIME, INC.

Respondent

Case No.: I-02-12288

FINAL ORDER

I. Introduction

On August 26, 2002, the Government served a Notice of Infraction upon Respondent New Prime, Inc., alleging a violation of 20 DCMR 900.1, which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three minutes while parked, stopped or standing. The Notice of Infraction alleged that the violation occurred in the 1200 block of 4th Street, N.E., on August 19, 2002 and sought a fine of \$500.

Respondent filed a timely answer with a plea of Admit with Explanation. On September 17, 2002, I issued an order permitting the Government to respond within 14 days. The Government has elected not to file any response.

II. Summary of the Evidence

Respondent's truck driver asserts that he arrived for a scheduled delivery at 1260 4th Street, N.E. at 7 AM on August 19, 2002 but the customer was not ready for the delivery. Instead, the customer instructed him to park on the street to await unloading. The driver states

that he waited seven hours before the truck was unloaded and that, because the temperature was in the 90's that day, he ran the engine intermittently throughout the day to operate the air conditioning system so he could sleep.

III. Findings of Fact

Respondent's plea of Admit with Explanation establishes that one of its trucks idled its engine for more than three minutes while parked in the 1200 block of 4th Street, N.E., on August 19, 2002. The driver idled the engine to operate the vehicle's air conditioning system on a hot day. Respondent has accepted responsibility for the violation. Respondent has been found liable for two previous violations of § 900.1, based upon pleas of Admit. *DOH v. New Prime, Inc.* OAH No. I-02-12187 (Closure Notice, September 5, 2002); *DOH v. New Prime Inc.*, OAH No. I-00-10287 (Closure Order, September 11, 2000).

IV. Conclusions of Law

By idling the engine of a truck for more than three minutes while parked, Respondent violated 20 DCMR 900.1. Although a higher fine is authorized for repeat offenders such as this Respondent, the Government elected to seek only the fine that would be imposed upon a first offender, which is \$500. *See* 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (effective October 7, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999). *See also* 16 DCMR 3201. The driver's desire to run the air conditioner does not excuse or mitigate the violation, as the Council of the District of Columbia has amended § 900.1 to provide specifically that "operating air conditioning equipment" is not a permissible reason for a truck to idle its engine in excess of three minutes. Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999,

D.C. Law 13-35, § 4. *See* 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999). *DOH v. Forman Equipment, Inc.* OAH No. I-00-10366 at 3 (Final Order, November 9, 2000). Although Respondent has accepted responsibility for the infraction, its two prior offenses outweigh that mitigating factor, particularly since the Government did not seek an enhanced fine in light of those earlier offenses. Accordingly, the full fine of \$500 will be imposed.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2003:

ORDERED, that Respondent shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent

pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 02/11/03

John P. Dean
Administrative Judge